



## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 302**

**[EPA-HQ-SFUND-1990-0005; FRL-9115-01-OLEM]**

### **Change of Submissions for CERCLA Section 103 Continuous Release Reports to the Appropriate EPA Headquarters Office**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA or the Agency) is issuing a technical amendment to modify the submission location for Continuous Release Reports. Reports are currently submitted to respective EPA regional offices; with this technical amendment, EPA will instead require all future such reports to be submitted to the appropriate EPA Headquarters (HQ) office. The Agency is also correcting a typographical spelling error, correcting citations within the section, and amending the listed authority.

**DATES:** This final rule is effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**FOR FURTHER INFORMATION CONTACT:** Mark Douglas, U.S. Environmental Protection Agency, Office of Emergency Management, (MC: 5104A), 1200 Pennsylvania Avenue, NW, Washington, DC, 20460; 202-564-5572; [douglas.mark@epa.gov](mailto:douglas.mark@epa.gov).

### **SUPPLEMENTARY INFORMATION:**

#### **I. General Information**

Entities that may be affected by this action are those facilities subject to Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) specifically, entities that submit written Continuous Release Reports (CRRs) under the requirements of 40 CFR 302.8.

#### **II. What Does This Amendment Do?**

This technical amendment is being issued to modify where CRRs are submitted.

Currently, entities submit CRRs to the EPA regional office where the release occurs. This technical amendment will centralize the collection of the CRRs.

The Agency is now directing the regulated entities to submit the CRRs, regulated under 40 CFR 302.8(e), (e)(1), (f), (g)(2)(ii), (g)(3), and (j), to the appropriate EPA HQ office at 40 CFR 302.8(e), (e)(1), (f), (g)(2)(ii), (g)(3), and (j). This action also clarifies that follow-up notifications (“first anniversary report”), 40 CFR 302.8(f), should also be submitted to the appropriate EPA HQ office. Mailing address and additional information can be found at the EPA website for CERCLA and Emergency Planning and Community Right-to-Know Act (EPCRA) continuous release reporting: <https://www.epa.gov/epcra/cercla-and-epcra-continuous-release-reporting>.

This technical amendment corrects a typographical error to change “considsred” to “considered” at 40 CFR 302.8(l). This action corrects citation errors at 40 CFR 302.8(g)(2)(i) and (g)(4). Section 302.8(g)(2)(i) cites §302.8(c)(7), and §302.8(g)(4) cites §302.8(c)(2)(xi), both of which no longer exist. The correct citations are section §§302.8(h) and 302.8(e)(1)(iv)(H), respectively. Finally, this action amends the authority for part 302 to include CERCLA authority citations of 42 U.S.C. 9601 et. seq., 42 U.S.C. 9602, and 42 U.S.C. 9603.

### **III. Rulemaking Procedures and Findings of Good Cause**

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this technical amendment final without prior proposal and opportunity for comment, because such notice and opportunity for comment is unnecessary for the following two reasons. First, this action is merely updating the regulatory text to require that CRR submissions be sent to the appropriate EPA HQ office instead of the regions. Contents or other requirements of the submissions have not changed. Thus, this action is procedural and does not affect any substantive requirements. Second, this action includes minor, non-substantive technical

corrections since it involves correcting a typographical error to change the spelling of “considsred” to “considered” at 40 CFR 302.8(l), to correct citation errors at 40 CFR 302.8(g)(2)(i) and (g)(4), and to amend the authority citations for 40 CFR part 302. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

#### **IV. Effective Date**

Section 553(d)(3) of the APA provides that final rules shall not become effective until 30 days after publication in the Federal Register “except . . . as otherwise provided by the agency for good cause.” The purpose of this provision is to “give affected parties a reasonable time to adjust their behavior before the final rule takes effect.” *Omnipoint Corp. v. Fed. Comm’n Comm’n*, 78 F.3d 620, 630 (D.C. Cir. 1996); see also *United States v. Gavrilovic*, 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history). Thus, in determining whether good cause exists to waive the 30-day delay, an agency should “balance the necessity for immediate implementation against principles of fundamental fairness which require that all affected persons be afforded a reasonable amount of time to prepare for the effective date of its ruling.” *Gavrilovic*, 551 F.2d at 1105. EPA has determined that there is good cause for making this final rule effective immediately because it merely changes the address where the CRRs are submitted, corrects a spelling error and minor citation errors, and amends the 302 authority citation. For this reason, the Agency finds that good cause exists under APA section 553(d)(3) to make this rule effective immediately upon publication.

#### **V. Do Any of the Statutory and Executive Order Reviews Apply to This Action?**

Under Executive Order 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821, January 21, 2011), this action is not a “significant regulatory action” and is therefore not subject to the Office of Management and Budget (OMB) review. Additionally, this action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866. Because this action is not subject to notice and comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the

Regulatory Flexibility Act (5 U.S.C. 601 et seq.) or Sections 202 and 205 of the Unfunded Mandates Reform Act (2 U.S.C. 1531–1538). In addition, this action does not significantly or uniquely affect small governments. This action does not create new binding legal requirements that substantially and directly affect tribes under Executive Order 13175 (65 FR 67249, November 9, 2000). This action does not have significant Federalism implications under Executive Order 13132 (64 FR 43255, August 10, 1999). Because this final rule is not subject to review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). Continuous release reporting is covered under OMB Control Number 2050-0086. This final rule does not contain any changes to the information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., nor does it require any special considerations under Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994). This action does not involve technical standards; thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

This action is subject to the Congressional Review Act (CRA), and the EPA will submit a rule report to each House of Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and comment rulemaking procedures are impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 808(2)). The EPA has made a good cause finding for this rule as discussed in Section III of the preamble, including the basis for that finding.

#### **List of Subjects in 40 CFR Part 302**

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous

Waste, Intergovernmental relations, Natural resources, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: November 2, 2021.

Barry N. Breen,  
*Acting Assistant Administrator,*  
*Office of Land and Emergency Management.*

For the reasons stated in the preamble, the EPA amends title 40, chapter I of the Code of Federal Regulations as follows:

## **PART 302 – DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION**

1. The authority citation for part 302 is revised to read as follows:

**Authority:** 33 U.S.C. 1251 *et. seq.*, 42 U.S.C. 9601 *et. seq.*, 42 U.S.C. 9602, 42 U.S.C. 9603.

2. Section 302.8 is amended by revising paragraphs (e) introductory text, (e)(1) introductory text, (f) introductory text, (g)(2)(i) and (ii), (g)(3) and (4), (j) introductory text, and (l) to read as follows:

### **§ 302.8 Continuous releases.**

\* \* \* \* \*

(e) *Initial written notification.* Initial written notification of a continuous release shall be made to the appropriate EPA HQ office. (Note: In addition to the requirements of this part, releases of CERCLA hazardous substances are also subject to the provisions of SARA Title III, also known as the Emergency Planning and Community Right-to-Know Act (EPCRA), section 304, and EPA's implementing regulations codified at 40 CFR part 355, which require initial telephone and written notifications of continuous releases to be submitted to the appropriate State emergency response commission and local emergency planning committee.)

(1) Initial written notification to the appropriate EPA HQ office shall occur within 30

days of the initial telephone notification to the National Response Center, and shall include, for each release for which reduced reporting as a continuous release is claimed, the following information:

\* \* \* \* \*

(f) *Follow-up notification.* Within 30 days of the first anniversary date of the initial written notification, the person in charge of the facility or vessel shall evaluate each hazardous substance release reported to verify and update the information submitted in the initial written notification. The follow-up written notification shall be submitted to the appropriate EPA HQ office. The follow-up notification shall include the following information:

\* \* \* \* \*

(g) \*\*\*

(2) \*\*\*

(i) Reporting at least one statistically significant increase report as required under paragraph (h) of this section and, at the same time, informing the National Response Center of the change in the normal range; and

(ii) Submitting, within 30 days of the telephone notification, written notification to the appropriate EPA Headquarters office describing the new normal range, the reason for the change, and the basis for stating that the release in the increased amount is continuous and stable in quantity and rate under the definitions in paragraph (b) of this section.

(3) *Changes in other reported information.* If there is a change in any information submitted in the initial written notification or the follow-up notification other than a change in the source, composition, or quantity of the release, the person in charge of the facility or vessel shall provide written notification of the change to the appropriate EPA HQ office, within 30 days of determining that the information submitted previously is no longer valid. Notification shall include the reason for the change, and the basis for stating that the release is continuous and stable under the changed conditions.

(4) *Certificate of changes.* Notification of changes shall include the case number assigned by the National Response Center or the Environmental Protection Agency and also the signed certification statement required at (e)(1)(iv)(H) of this section.

\* \* \* \* \*

(j) *Use of the SARA Title III (EPCRA) section 313 form.* In lieu of an initial written report or a follow-up report, owners or operators of facilities subject to the requirements of SARA Title III (EPCRA) section 313 may submit to the appropriate EPA HQ office, a copy of the Toxic Release Inventory form submitted under SARA Title III (EPCRA) section 313 the previous July 1, provided that the following information is added:

\* \* \* \* \*

(1) *Multiple concurrent releases.* Multiple concurrent releases of the same substance occurring at various locations with respect to contiguous plants or installations upon contiguous grounds that are under common ownership or control may be considered separately or added together in determining whether such releases constitute a continuous release or a statistically significant increase under the definitions in paragraph (b) of this section; whichever approach is elected for purposes of determining whether a release is continuous also must be used to determine a statistically significant increase in the release.

\* \* \* \* \*